

C98VGUAP

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

10 CR 476 (TPG)

5 ANTHONY GUARINO,

6 Defendant.

7 -----x

8 New York, N.Y.

9 August 7, 2012

4:25 p.m.

10 Before:

11 HON. THOMAS P. GRIESA,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the
Southern District of New York

17 JOHN ZACH

Assistant United States Attorney

18 MATHEW MARI

19 MATTHEW ROSENBLUM

Attorney for Defendant

20 ALSO PRESENT: CHRISTOPHER McKEOGH, FBI

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(In open court)

THE DEPUTY CLERK: For the administration of a plea,
United States of America v. Anthony Guarino.

Government ready?

MR. ZACH: It is.

Good afternoon, your Honor.

John Zach for the government.

With me is Chris McKeogh of the FBI.

THE DEPUTY CLERK: Defendant present and ready to
plead?

MR. MARI: Your Honor, for the defendant, Mathew Mari,
M-A-R-I. And with me, your Honor, as co-counsel is Matthew
Rosenblum, who is admitted in this district and in the Eastern
District. He practices in Suffolk County. He is also
Mr. Guarino's brother-in-law, and he's been helping me on this
case with the paperwork. He will be submitting a sentencing
memorandum and a motion for downward departure before the
sentence. And I'd like to introduce him for the Court. It's
his first appearance today.

MR. ROSENBLUM: Good afternoon, your Honor.

Thank you.

THE COURT: Just a minute, please.

Is this Mr. Mari?

MR. MARI: Yes, your Honor.

THE COURT: All right.

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1 What is the application?

2 MR. MARI: Judge, my application is that the defendant
3 wishes to withdraw his previously-entered pleas of not guilty
4 and to enter a plea of guilty to Count One of the indictment,
5 which is conspiracy to commit securities fraud.

6 THE COURT: Can I question your client?

7 MR. MARI: Yes, your Honor.

8 THE COURT: All right.

9 Mr. Guarino, how old are you?

10 THE DEFENDANT: 56, your Honor.

11 THE COURT: And you are represented here by your
12 attorney, Mathew Mari; is that right?

13 THE DEFENDANT: I am, your Honor. That's right.

14 THE COURT: Am I saying it -- or is it Mari?

15 MR. MARI: That's correct, Judge.

16 THE COURT: Are you satisfied with Mr. Mari's
17 representation and his advice?

18 THE DEFENDANT: I am, your Honor.

19 THE COURT: Are you under the influence of any alcohol
20 or narcotics as you stand here?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you been subjected to any force or
23 any threats to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Did you sign a plea agreement today?

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1 THE DEFENDANT: I did, your Honor.

2 THE COURT: Mr. Mari, did you sign it also?

3 MR. MARI: Yes, your Honor.

4 THE COURT: Now, of course, I know that Mr. Mari has
5 gone over the charges with you, and I'm not going to try to go
6 into a lot of detail, but Count One in here charges the sale of
7 securities on the basis of certain fraudulent representations.
8 That's the essence of it, and you know that, right?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: Now, I'm not going to attempt at this time
11 to discuss the details of the plea agreement, but I am obliged
12 to point out what the applicable statute provides as far as the
13 potential sentence for this -- what is charged in Count One.

14 Do you understand that anyone convicted of the crime
15 charged in Count One can, according to the statute, be
16 sentenced to a prison term of up to five years?

17 THE DEFENDANT: I do, your Honor.

18 THE COURT: And following such imprisonment, if a
19 prison term is imposed, there can be a supervised release term
20 of up to three years.

21 Do you understand that?

22 THE DEFENDANT: I do, your Honor.

23 THE COURT: Under the statute, anyone convicted of
24 this crime can be fined \$250,000 or even more. Do you
25 understand that?

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1 THE DEFENDANT: I do, your Honor.

2 THE COURT: In addition to any other feature of the
3 sentence, \$100 special mandatory assessment must be paid.

4 Do you understand that?

5 THE DEFENDANT: I do.

6 THE COURT: And Count One of the indictment contains
7 allegations about forfeiture, and you're aware of those, right?

8 THE DEFENDANT: I am, your Honor.

9 THE COURT: Do you understand that it is up to me to
10 decide what sentence is to be imposed if you plead guilty; and
11 I can make no decision on the sentence, nor can I impose the
12 sentence today and all; that awaits a future time when I've had
13 an opportunity to become thoroughly acquainted with the plea
14 agreement and the rules and other legal considerations about
15 the sentence. I also need a report about your background and
16 we need to hear from counsel and from you. And none of that
17 can be done this afternoon.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: Has any promise been made to you as to the
21 exact sentence that I will impose?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right.

24 Now, I want to ask you some questions to make sure you
25 understand the rights you are giving up by pleading guilty.

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1 Do you understand that you do not need to plead
2 guilty; you can maintain a plea of not guilty and go to trial;
3 you have a right to do that.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And at that trial, you'd have a right
7 to -- the government can obtain a conviction only by proving
8 your guilt to a jury by proof beyond a reasonable doubt.

9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: And at that trial, you'd have a right to
12 an attorney. You'd have the right to an attorney at the trial
13 and on any appeal, and you'd have the right to have the
14 government pay for your attorney if time came you could not pay
15 for one yourself.

16 Do you understand that?

17 THE DEFENDANT: I do.

18 THE COURT: And at that trial, which you'd have a
19 right to -- your attorney would have the right to cross-examine
20 all government witnesses and obtain a court order to bring in
21 any witnesses who might assist you.

22 Do you understand that?

23 THE DEFENDANT: I do.

24 THE COURT: You, yourself, would have a right to
25 remain silent; you wouldn't have to confess anything; you

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1 wouldn't be required to testify at all.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: But, if you plead guilty, there will be no
5 trial; you'll be convicted on the basis of your own plea and
6 your own admission, and you'll need to tell me in your own
7 words what you did to commit the offense charged here, and
8 you'll need to make all statements in that regard truthfully or
9 else you'll be guilty of a new crime of perjury or false
10 statement.

11 Do you understand that?

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: Now, if you still wish to plead guilty,
14 would you tell me in your own words what you did to commit the
15 offense that is charged here.

16 THE DEFENDANT: Beginning in 2002 through 2010, I was
17 directly involved in the sale of securities of Real Care
18 Corporation. I never disclosed or even lied about the amount
19 of commissions we received that were 40 and 50 percent. I also
20 agreed with others to hide the commissions from my office in
21 New York.

22 THE COURT: Is that a sufficient allocution?

23 I think it is.

24 MR. ZACH: Yes, your Honor.

25 THE COURT: And the defense?

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1 Do you believe it's a sufficient allocution?

2 MR. MARI: Yes, your Honor.

3 THE COURT: I agree.

4 I accept the plea; find that it's factually-based and
5 voluntary.

6 And sentence is set for Thursday, December 6, 2012 at
7 4:30 in the afternoon.

8 MR. MARI: Correct, your Honor.

9 THE COURT: Is there anything else?

10 MR. MARI: No.

11 MR. ZACH: Judge, can I put something on the record
12 really quickly?

13 I just wanted to note that in the plea agreement that
14 there is a waiver of appeal provision; that if he is sentenced
15 to a sentence within or below the guidelines set forth in the
16 plea agreement, that he waives his right to appeal.

17 THE COURT: You understand that, Mr. Guarino?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Very good.

20 Thank you.

21 MR. MARI: Thank you, Judge.

22 * * *